IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 147 of 2005.

Date of decision: 03.01.2006.

Jeevan Sood ... Petitioner

Versus

Vijay Kumar … Respondent

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Dharamvir Sharma, Advocate.

For the respondent: Mr. B.K. Sood, Advocate.

V.M. Jain, J. (Oral):

This revision petition has been filed by the J.D. against the order dated 26.9.2005 passed by the learned Executing Court ordering the attachment of the property of the J.D. to compel him to comply with the decree and further directed that in case J.D. does not comply with the decree under execution, the D.H. will be at the liberty to approach the Executing Court for the sale of the attached property of the J.D. at the end of six months from the date of the said order.

After hearing the learned counsel for the parties and perusing the record, in my opinion, there is no merit in this revision petition and the same is liable to dismissed. Admittedly, the decree

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[1]Whether reporters of Local Papers may be allowed to see the judgment?

passed by the Court had not been complied with by the J.D. It was under those circumstances that the learned Executing Court had ordered the J.D. to pay the decretal amount to the D.H. within two months and had also ordered the attachment of the property of the J.D. to compel him to comply with the said decree. In my opinion, the order passed by the learned Executing Court is perfectly in accordance with law and no fault could be found with the same. So far as the question regarding the legality of the decree under execution is concerned, in my opinion, the Executing Court could not have gone into that question and had rightly not gone into that question and even this Court while hearing the revision petition against the order passed by the Executing Court cannot go into the question with regard to the legality of the decree under execution. The learned counsel appearing for the J.D. – petitioner submitted before me that in case he is not allowed to challenge the legality of the decree under execution, he would have nothing to say in the present revision petition.

As referred to above, the J.D. cannot be allowed to question the legality of the decree under execution, in the execution proceedings, especially when the said decree was passed on compromise and the Court which passed the decree certainly had the jurisdiction to pass such decree. Thus, such a decree could not be termed as void abinitio or totally without jurisdiction.

In view of the detailed discussion above, finding no merit in this revision petition, the same is hereby dismissed.

CMP No. 192 of 2005:

In view of the dismissal of the main petition, the stay order dated 28.11.2005 shall stand vacated and the application stands disposed of.

(V.M. Jain),
Judge

January 03, 2006
(BSS)